



August 1, 2000

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2000-2898

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137633.

The Texas Department of Criminal Justice (the "department") received a request for a specific videotape regarding a certain inmate and a corresponding report. You claim that at least portions of the requested information are excepted from disclosure under sections 552.101, 552.107, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your claim regarding section 552.107. Section 552.107(2) provides that information is excepted from required public disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). You claim that the information in question is excepted from disclosure under section 552.107(2) in conjunction with the decision of the federal court in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and rev'd in part*, 679 F.2d 1115, *amended in part and vacated in part, reh'g denied*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). The Stipulated Modification of the Amended Decree in the *Ruiz* case restricted the dissemination of "sensitive information" regarding inmates. *See* Open Records Decision No. 560 (1990). However, the final judgment in *Ruiz*, entered on December 11, 1992, gave the Texas Board of Criminal Justice (the "board") authority to define the term "sensitive information." On January 21, 2000, the board met and, acting under the authority of the final judgment in *Ruiz*, determined that "the term 'Sensitive Information' shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code." Thus, the board has determined that information that is within one of the categories delineated in section 552.029 of the Government Code is not "sensitive information" that the department may withhold from the public under section 552.107(2) in conjunction with the *Ruiz* decision.

Section 552.029 of the Government Code provides in relevant part:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure[:]

...

(3) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). Therefore, basic information about a use of force or an alleged crime involving an inmate is not excepted from disclosure under section 552.107 of the Government Code and must be released in accordance with section 552.029(8).

The requested videotape and corresponding report pertain to an incident involving the use of force against a deathrow inmate.<sup>1</sup> Therefore, under section 552.029(8), the department must release basic information about the use of force that is the subject of the submitted information. Basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident.<sup>2</sup>

We find that the submitted videotape does not contain such basic information. Therefore, the department must withhold the submitted videotape under section 552.107(2) in conjunction with *Ruiz*. However, the submitted report does contain basic information about a use of force under section 552.029(8). Therefore, while the department must withhold most of the submitted report under section 552.107(2) in conjunction with *Ruiz*, it must release the basic information contained in the report under section 552.029(8).<sup>3</sup>

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<sup>1</sup>You correctly note that because the subject of the information at issue is an inmate sentenced to death, section 552.131 (regarding certain information relating to inmates of the department) does not apply in this instance. See Gov't Code § 552.131(b)(2).

<sup>2</sup>We note that the basic information that is subject to public disclosure under section 552.029 corresponds to the basic "front-page" offense and arrest report information that must be released to the public in accordance with section 552.108. See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

<sup>3</sup>Because sections 552.107 and 552.029 are dispositive of this matter, we do not address your other arguments except to note that social security numbers of department employees are not "basic information" under section 552.029.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

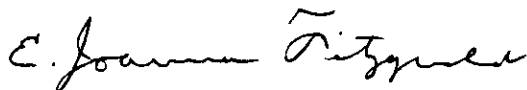
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\lp

Ref: ID# 137633

Encl: Submitted documents

cc: Ms. Jean Terranova  
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(w/o enclosures)